

November 08, 1999

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VIA US MAIL AND FACSIMILE

David K. Clay, Esq.
Senior Attorney
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960

Re: Collierville Superfund Site; Proposed Tolling Agreement

Dear Mr. Clay:

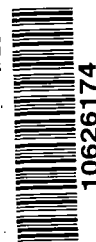
This letter transmits a revised tolling agreement, working from the form you provided me. It is Carrier's intention to sign an appropriate tolling agreement.

In the introductory language, I have noted that Carrier is a Delaware corporation with operations in Collierville, Tennessee. I have also made the commitments of the signatories reciprocal, instead of just applying to Carrier.

Paragraph one is changed by the addition of the word "potential" before "causes of action" in the third sentence, in order to be consistent with the terms in the first sentence. At the end of the third sentence, I have added language clarifying that these potential causes of action do not relate to any other site or matter.

Paragraph two is changed to make clear that it is the United States' causes of action which are the subject of this agreement. CERCLA actions are ordinarily brought by the United States.

Paragraph three is streamlined, and it is made clear that interest will not run during the tolling period.



David K. Clay, Esq.
November 08, 1999
Page 2

Paragraph four substitutes "Carrier" for the undersigned, and adds an additional sentence which expressly reserves all rights and defenses except as expressly tolled by this agreement. This change makes the language parallel with the assertions the United States makes in paragraph five.

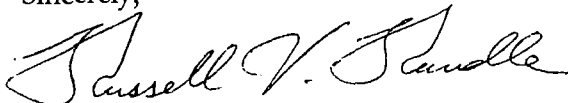
Paragraph five is unchanged.

Paragraph six is changed. If the United States wishes to terminate negotiations, it may do so, but such termination should be accompanied by notice, and the tolling period should run out shortly after it or Carrier gives such notice. It is not clear why the tolling period should continue once either party has broken off discussions.

Paragraphs seven and eight are unchanged, except by the insertion of November 15, 1999 as the effective date.

Does the United States take the position in this matter that no statute of limitations applies, as language in this agreement implies? EPA advanced a similar argument in the context of TSCA civil penalty proceedings under 28 U.S.C. section 2462 but the court rejected it. *3M v. Browner*, 17 F.3d 1453, 1457 (D.C. Cir. 1994). It would assist our review of these claims if we knew what statute of limitation the United States claims governs these costs, or if it claims no statute of limitations governs, what legal basis there is for such a position.

Sincerely,



Russell V. Randle
Counsel for Carrier Corporation

enclosure

**TOLLING AGREEMENT FOR THE CARRIER AIR CONDITIONING
SUPERFUND SITE**

This Tolling Agreement ("Agreement") is entered into between the Environmental Protection Agency ("EPA") on behalf of the United States of America ("United States"), and Carrier Corporation, a Delaware Corporation with an operation located at Collierville, Tennessee ("Carrier"). The undersigned representatives of the parties certify that s/he is fully authorized to enter into terms and conditions of the Agreement and to execute and bind the United States or Carrier, as the case may be, to this document. The purpose of this Agreement is to facilitate discussions between EPA and Carrier for response costs without recourse to litigation, if possible.

The Parties hereby agree as follows:

1. The United States contends that it presently has a potential cause of action against Carrier pursuant to Section 107 of the Comprehensive Environmental Response Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. § 9607. The United States also contends that it will have future costs. These potential causes of action relate to reimbursement of costs with respect to the Carrier Air Conditioning Superfund Site located in Collierville, Tennessee ("Site"), and not to any other Site or matter.
2. EPA and Carrier enter into this Agreement in order to pursue good faith negotiations to attempt to resolve the United States' causes of action referred to in Paragraph One without litigation. It is acknowledged to be in the interest of the United States and Carrier to attempt to resolve any disagreements without litigation, if possible.
3. The United States and Carrier agree that the period of time commencing on November 30, 1999, and ending March 31, 2000, inclusive, shall not be included in determining the timeliness of filing of any cause of action described in paragraph one, whether the timeliness issue arises in connection with any applicable statute of limitation, laches, or any other defense, nor shall this period be included for the purposes of computing interest on any obligation which is agreed to or found to be due.
4. This Agreement does not constitute an admission of any fact or liability on the part of Carrier, nor does it affect the assertion of any defense to any allegations of liability except as specifically provided in Paragraph Three of this Agreement. Carrier specifically reserves all its rights and defenses against any claims to be asserted by the United States, except as expressly tolled by this agreement, including the argument that the statute of limitations has already expired.
5. This Agreement does not constitute any admission or acknowledgment on the part of the United States regarding any fact relating to the statute of limitations under CERCLA or any

other applicable statute or laws, nor does it constitute an agreement by the United States that any defense to liability as to costs under CERCLA is available to the undersigned. The United States reserves the right to assert that no statute of limitations applies.

6. Upon written notice, either party may terminate negotiations. Such termination shall terminate the tolling period two weeks after the date of the notice. After any such notice by the United States, the United States may file an action against Carrier.
7. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by any of the parties or agent of the parties that is not contained in this written contract shall be valid or binding, and this contract may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed herein.
8. This Agreement shall be effective the 15th day November of 1999.

FOR THE ENVIRONMENTAL PROTECTION AGENCY;

BY: _____
Franklin E. Hill Date
Chief,
Program Services Branch
Waste Management Division
U.S. EPA Region 4

Carrier Air Conditioning Superfund Site Tolling Agreement
Signature Page

_____ consents to the terms and conditions
of the Agreement on the _____ day of _____ 1999.

BY: _____
(Name of Signing Party)

FOR: Carrier Corporation

(Address) _____

